

EXHIBIT B

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re:

THE ROMAN CATHOLIC BISHOP OF
OAKLAND, a California corporation sole,

Debtor.

Case No. 23-40523

Chapter 11

**[PROPOSED] ORDER REFERRING
PARTIES TO MEDIATION, APPOINTING
MEDIATORS AND GRANTING RELATED
RELIEF**

Judge: Hon. William J. Lafferty

Upon the *Joint Motion for Entry of Order Referring Parties to Mediation, Appointing Mediators and Granting Related Relief* [Dkt. No. 705] (the “**Motion**”) filed by (i) the Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in possession (the “**Debtor**” ~~or~~ “**RCBO**”) in the above-captioned chapter 11 bankruptcy case (the “**Chapter 11 Case**”) and (ii) the Official Committee of Unsecured Creditors (the “**Committee**,” and together with the Debtor, the

1 “**Movants**”) for entry of an order requiring mediation (the “**Mediation**”) of the Mediation Matters
2 (defined below) and appointing ~~Hon. Christopher Sontchi (Ret.) (“Judge Sontchi”) and Jeff Krivis~~
3 ~~(“Mr. Krivis” and together with Judge Sontchi, the “Mediators”)~~ as mediators; and upon
4 Pacific’s Objection to Joint Motion for Entry of Order Referring Parties to Mediation and Granting
5 Related Relief [Dkt No. 748] (the “Pacific Objection”) and to the joinders to the Pacific Objection filed
6 by (i) Continental Casualty Company [Dkt. No. 751] and (ii) Travelers Casualty & Surety Company
7 f/k/a Aetna Casualty & Surety Company [Docket No. 755] (collectively with the Pacific Objection, the
8 “**Objection**”); and the Court having reviewed and considered the Motion, the reply to the Objection
9 filed by the Movants [Dkt. No. 761], and the Objection, and the statements of counsel at the hearing
10 held on the Motion on January 9, 2024; and the Court finding that it has jurisdiction over this matter,
11 that venue in this Court is proper, and that notice of the Motion thereon was reasonable and sufficient
12 under the circumstances; and the Court further finding that the relief requested in the Motion is in the
13 best interests of the Debtor, its estate and its creditors; and after due deliberation and good cause
14 appearing,

15 **IT IS HEREBY ORDERED** as follows:

16 1) The Motion is GRANTED as set forth and modified below.
17 2) The Court authorizes and appoints ~~the Mediators~~ Hon. Christopher Sontchi (Ret.)
18 (“Judge Sontchi”) and Jeff Krivis (“Mr. Krivis” and together with Judge Sontchi, the “Committee
19 Mediators”) for the purpose of mediating the Committee Mediation Matters (defined below). The
20 Court authorizes and appoints Hon. Randall Newsome (Ret.) (“Judge Newsome”), and Timothy
21 Gallagher (“Mr. Gallagher” and together with Judge Newsome, the “Insurance Mediators”) for the
22 purpose of mediating the Insurance Mediation Matters (defined below). The Committee Mediators and
23 the Insurance Mediators are collectively referred to herein as the “Mediators.”

24 3) Notwithstanding the forgoing, the effectiveness of Judge Newsome’s retention and Mr.
25 Gallagher’s retention is, respectively, subject to each filing a declaration with this Court attesting to his
26 connections with the parties in interest in the Chapter 11 Case using the Schedule of Interested Parties
27 used by the Committee Mediators. Parties in interest shall have 7 days after the filing of the declaration
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1 to object to the retention of either on the grounds he has disabling conflicts of interest. If no such
2 objections are filed, Judge Newsome and/or Mr. Gallagher, as the case may be, shall be deemed retained
3 as a Mediator as of the date of this Order. If an objection is timely filed, the Court shall promptly
4 schedule a hearing to resolve the underlying dispute. The filing of such objection and its resolution shall
5 have no impact in any way on the retention of the other Mediators, who are authorized to immediately
6 commence mediation on the Mediation Matters.

7 4) ~~3)~~ The Mediators, as court appointed mediators, shall be immune from claims arising out
8 of acts or omissions incident to the Mediators' services rendered in connection with the Mediation to the
9 maximum extent permitted by law.

10 5) ~~4)~~ The Mediators shall apply for the payment of their fees and the reimbursement of their
11 expenses in conformity with the Bankruptcy Code, Bankruptcy Rules, Local Rules and orders of this
12 Court, provided that the Insurers (as defined below) shall pay fifty percent (50%) of the fees and
13 expenses of the Insurance Mediators when and as due according to the authorization obtained pursuant
14 to the Bankruptcy Code, Bankruptcy Rules, Local Rules and orders of this Court.

15 6) ~~5)~~ The participants in the mediation (the "**Mediation Parties**" and each a "**Mediation**
16 **Party**"), through their respective counsel, are:

17 A. the Debtor; ~~and~~

18 B. the Committee; and,

19 C. The Debtor's insurers named as defendants in adversary proceedings *The Roman*
20 *Catholic Bishop of Oakland v. Pacific Indemnity et al.*, Adv. Case No. 23-04028
21 *and The Roman Catholic Bishop of Oakland v. American Home Assurance Co. et*
22 *al.*, Adv. Case No. 23-04037 (such adversary proceedings, the "**Adversary**
23 **Proceedings**" and such insurer defendants, the "**Insurers**").

24 7) ~~6)~~ The following matters are hereby referred to mediation between the Committee and
25 Debtor (the "~~Mediated~~**Committee Mediation Matters**"), all of which are within this Court's
26 jurisdiction over the administration of this chapter 11 case:

27 i. Assessment of sexual abuse claims and the Debtor's potential legal liability for
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1 the sexual abuse claims;

2 ii. The negotiation of material financial, injunctive, and other provisions of a plan
3 of reorganization;

4 iii. The resolution of any disputes related to the formation of a trust and the process
5 for allowance of and distributions to holders of abuse claims;

6 iv. The resolution of any disputes related to the process to resolve claims asserted by
7 or against a church and certain other non-Debtor Catholic entities within the
8 Diocese;

9 v. The resolution of any other issue necessary to determine the rights of the
10 Movants to reach agreement on the terms of a confirmable plan of reorganization
11 supported by the Movants; and,

12 vi. Such other issues as may arise.

13 8) The following matters are hereby referred to mediation between the Debtor, the
14 Committee and the Insurers (the “Insurance Mediation Matters”), all of which are within this Court’s
15 jurisdiction over the administration of this Chapter 11 case:

16 i. The claims and defenses asserted by the parties in the Adversary Proceeding,
17 including issues related to indemnity, defense and insurance coverage of sexual
18 abuse claims;

19 ii. The resolution of any other issue necessary to determine the rights of the Insurers
20 to reach agreement on the terms of a confirmable plan of reorganization
21 supported by some or all of the Insurers; and,

22 iii. Such other issues as may arise.

23 9) ~~7)~~ The results of the Mediation are non-binding and are without prejudice to any
24 Mediation Party’s rights, claims, or defenses, including with respect to any of the Mediation Matters, all
25 of which are expressly preserved.

26 10) ~~8)~~ The Mediation shall take place on such date(s) and location(s) (either in-person or via
27 electronic means), as the Mediators reasonably determine, which may include joint and private meetings
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1 between the Mediators and Mediation Parties during the course of the Mediation, including joint and
2 separate meetings with any of the parties to the Committee Mediation Matters and the Insurance
3 Mediation Matters.

4 11) ~~9)~~ The Mediators shall have the authority to require a representative, with complete
5 authority to negotiate and settle all disputed issues and amounts, of each of the Mediation Parties to
6 personally attend the Mediation meeting(s) either in person or via video conference.

7 12) ~~10)~~ The Mediators shall have authority to control all procedural aspects of the
8 Mediation(s), including when the Mediation Parties will meet jointly and/or separately with the
9 Mediator(s), and whether meetings shall be by telephone, video conference, or in person. The Mediators
10 may require Mediation Parties to sign a mediation agreement as may be reasonably required to promote
11 the Mediation, except that any such supplemental agreement shall be consistent with and subject in all
12 respects to the terms of this Order. The Mediators may report to the Court any willful failure to attend
13 or participate in good faith in the mediation process or mediation conference. Such failure may result in
14 the imposition of sanctions by the Court.

15 13) ~~11)~~ Participation by the Mediation Parties in the Mediation will not prejudice their rights
16 with respect to any disputed issue in the Chapter 11 Case, and all such rights, to the extent they existed
17 prior to this Order, are preserved and may be exercised consistent with any order of the Court. This
18 includes, without limitation, the Mediation Parties' rights (if any) to (a) seek a judicial determination
19 from this Court with respect to any issue that may arise during the Mediation requiring judicial
20 resolution; (b) contest the jurisdiction of the Bankruptcy Court; (c) contest the entry of final orders or
21 judgments by the Bankruptcy Court; (d) withdraw the reference; or (e) demand arbitration or a trial by
22 jury.

23 14) ~~12) Report of Result of the Mediation.~~ After the Mediation concludes, the Mediators will
24 report to chambers staff whether the Mediation resulted in a settlement.

25 15) ~~13) Confidentiality.~~ There shall be absolute mediation privilege, and all communications
26 during the Mediation shall be confidential, protected from disclosure and shall not constitute a waiver of
27 any existing privileges and immunities, shall not be disclosed to any third party for any reason, and shall
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1 not be used for any purpose other than Mediation. Submissions to the Mediators shall not be delivered
2 to anyone else without the consent of the submitting party. Any statements made by the Mediators, any
3 of the Mediation Parties, or other parties that participate in the mediation process shall not be divulged
4 by any of the participants in the Mediation (or their attorneys, representatives, or agents) or by the
5 Mediators to the Court or to any third party. Except for an executed settlement agreement, all records,
6 reports, or other documents received or made by the Mediators while serving such capacity shall be
7 confidential and shall not be provided to the Court. The Mediators and each participant or party to the
8 Mediation shall not be compelled to divulge any records, reports, or other documents shared in the
9 Mediation, and shall not be compelled to testify in regard to the Mediation in connection with any
10 arbitral, judicial or other proceeding, including any hearing held by this Court. Notwithstanding
11 anything in Federal Rule of Evidence 408 to the contrary, no person may rely on or introduce as
12 evidence in connection with any arbitral, judicial or other proceeding, including any hearing held by this
13 Court, any aspect of the Mediation effort, including but not limited to (a) views expressed or suggestions
14 made by any of the Mediation Parties, or the Mediators, with respect to a possible settlement of the
15 Dispute; (b) statements or admissions made by any of the Mediation Parties in the course of the
16 Mediation and (c) proposals made or views expressed by the Mediators, or any of the Mediation Parties.
17 Nothing in this paragraph, however, precludes a report to the Court by the Mediators of (i) whether a
18 settlement was reached or (ii) any material failure on the part of one or more of the Mediation Parties to
19 comply with the party's obligations under this order. Further, nothing in this paragraph shall limit
20 communication between the Mediators during the Mediation. Further, nothing in this paragraph makes
21 a document or other information confidential that was received or developed by a Mediation Party
22 without an obligation of confidentiality that relates to the Mediation. The Mediators and Mediation
23 Parties may agree on confidentiality provisions in addition to those stated in this Order.

24 16) ~~14)~~ The Mediation Parties shall cooperate in pre-mediation discovery. In the event that a
25 discovery dispute arises that cannot be resolved by negotiation among the Mediation Parties involved, a
26 motion may be brought before this Court to resolve the dispute. The Court may hold hearings on short
27 notice on any discovery dispute. The Court expects the Mediation Parties to obtain such information as
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1 they may deem reasonable to participate meaningfully in the Mediation.

2 17) ~~15)~~ Notwithstanding any provision of this Order to the contrary, nothing contained in this
3 Order shall require any Mediation Party to produce documents or information that are subject to
4 attorney-client privilege, attorney work product, or any other legally recognized privilege.

5 18) Notwithstanding any provision of this Order to the contrary, no Mediation Party may
6 disclose to any other Mediation Party, either in connection with the Mediation or any pre-mediation
7 discovery, any information or documents which are protected by common interest privilege, without the
8 prior written consent of all parties sharing in such common interest privilege.

9 19) ~~16)~~ Nothing in this Order shall relieve any of the Mediation Parties or any other party in
10 interest from complying with applicable requirements of the Bankruptcy Code and Federal Rules of
11 Bankruptcy Procedure, such as requirements for obtaining court approval of any compromises of
12 controversies, stipulated stay relief or adequate protection, or sales of property outside the ordinary
13 course of business.

14 20) ~~17)~~ Any of the Mediation Parties may at any time file a motion with the Court to
15 withdraw from, suspend, and/or terminate the Mediation for cause.

16 21) ~~18)~~ Neither this Order or any of its terms shall be construed as a stay or prohibition of any
17 proceedings or issues in this Chapter 11 Case.

18 22) ~~19)~~ The Court retains discretion to modify this Order and retains exclusive jurisdiction to
19 hear and determine all matters arising from the implementation or interpretation of this Order.

20 *** END OF ORDER ***
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COURT SERVICE LIST

All ECF Recipients

~~MOTION TO EXTEND EXCLUSIVITY~~

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| Summary report: Litera Compare for Word 11.3.0.46 Document comparison done on 1/16/2024 3:27:22 PM | |
| Style name: Color | |
| Intelligent Table Comparison: Active | |
| Original DMS: nd://4880-6166-0826/1/RCBO - Joint Motion to Mediate_Revised Proposed Order.docx | |
| Modified DMS: nd://4874-2834-2942/1/RCBO - Post Hearing Mediation Order_1-16-2024_Clean.docx | |
| Changes: | |
| <u>Add</u> | 55 |
| Delete | 32 |
| Move From | 1 |
| <u>Move To</u> | 1 |
| <u>Table Insert</u> | 0 |
| Table Delete | 0 |
| <u>Table moves to</u> | 0 |
| Table moves from | 0 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel | 0 |
| Format changes | 0 |
| Total Changes: | 89 |